

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR RESPONDENT

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

**United States Court of Appeals
for the District of Columbia**

No. 9592

FILED SEP 22 1947

GEORGE M. FISHER, ET AL., *Petitioners,*

Joyce W. Stuntz
CLERK

V.

DISTRICT OF COLUMBIA, *Respondent.*

PETITION FOR REVIEW OF DECISION OF THE BOARD OF TAX
APPEALS FOR THE DISTRICT OF COLUMBIA

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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

No. 9592

GEORGE M. FISHER, ET AL., *Petitioners*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

BRIEF FOR RESPONDENT

PRELIMINARY STATEMENT

Petitioners' brief has not been prepared in compliance with Rule 17 of the General Rules of this Court with respect to (1) the Jurisdictional Statement, (2) the Statement of the Case, (3) Statutes Involved, and (4) Statement of Points. It is, therefore, necessary for respondent to furnish the Jurisdictional Statement, Statement of the Case, and Statutes Involved.

JURISDICTIONAL STATEMENT

This is a proceeding to review a decision of the Board of Tax Appeals for the District of Columbia, affirming four as-

sessments of inheritance taxes. The first assessment, in the amount of \$135.79, was made by the Assessor of the District of Columbia on September 10, 1946, upon the transfer of property from Willis Walter Fisher, decedent, to Mary I. Fisher (App. 2, 10). The tax was paid under protest in writing on November 12, 1946, and a petition (App. 1) was filed with the Board of Tax Appeals for the District of Columbia on December 6, 1946 (App. 10). Said Mary I. Fisher died October 26, 1946, survived by the petitioners (App. 10). The Assessor of the District made an assessment of inheritance tax of \$13.87 upon the share of the property of Mary I. Fisher transferred to each of the three petitioners. The latter assessments were paid under protest in writing on December 19, 1946 (App. 10).

On January 15, 1947 petitioners, by their counsel, with leave of the Board, filed an amendment to the aforesaid petition, seeking a refund of the taxes assessed as a result of the death of Mary I. Fisher (App. 4, 10).

The decision of the Board was entered on May 16, 1947 (App. 16). The petition for review by this Court was filed on June 11, 1947 (App. 17). This Court has jurisdiction under the provisions of Sections 3 and 4, Title IX of the District of Columbia Revenue Act of 1937 as added by the Act of May 16, 1938 (52 Stat. 371, c. 223; Title 47, Sections 2403 and 2404, D. C. Code, 1940 edition), as amended.

STATEMENT OF THE CASE

Willis Walter Fisher died May 13, 1946 and by his will devised all of his estate, real and personal, to Mary I. Fisher, his wife, who was named as decedent's executrix (App. 9). At the time of decedent's death, he was the owner of an undivided three-fourths interest in certain real estate located in the District of Columbia, which had been valued for the purpose of real estate taxation for the fiscal year ended June 30, 1946 at \$29,704.00 for the whole and \$22,278.00 for decedent's three-fourths interest therein (App. 9).

On July 15, 1946, Mary I. Fisher filed an inheritance tax return with the Assessor in which she listed the three-fourths interest in said real estate at a value of \$22,278.00. Such real estate was encumbered by mortgages aggregating \$19,029.80 (App. 9). The Assessor determined the value of the aforesaid three-fourths interest in real estate to be \$37,125.00 (App. 10) and assessed an inheritance tax in the amount of \$135.79 (App. 2, 7) upon the share transferred to Mary I. Fisher. In determining the tax the aforesaid value of \$37,125.00 was used as a base with respect to the real property (App. 10).

Mary I. Fisher died on October 26, 1946, intestate, survived by her sons, the petitioners in this proceeding. George M. Fisher, one of the petitioners and administrator of Mary I. Fisher's estate, paid the tax of \$135.79 assessed upon transfer of the aforesaid property from Willis Walter Fisher to Mary I. Fisher (App. 2, 7, 10).

Mary I. Fisher, at the time of her death on October 26, 1946, was the owner of the same three-fourths interest in the same real estate which had belonged to Willis Walter Fisher at the time of his death. The real property tax assessment on such property was the same for the fiscal year ended June 30, 1947 as it had been for the preceding fiscal year. On November 29, 1946, George M. Fisher, as administrator of the estate of Mary I. Fisher, filed an inheritance tax return showing distribution of her estate to petitioners as her heirs. On December 4, 1946, the Assessor made an assessment of inheritance tax of \$13.87 on the share of each of the petitioners. In determining the value of petitioners' shares of the estate of Mary I. Fisher, the Assessor computed the value of the three-fourths interest in said real property to be \$37,125.00 (App. 10).

On December 6, 1946, petitioners appealed from the \$135.79 assessment levied with respect to the devise of Willis Walter Fisher upon the ground that the Assessor refused to accept the assessed valuation of the real estate as determined for the purposes of real property taxation for the fiscal year in which Willis Walter Fisher died (App. 2, par. 4; App. 10).

On January 15, 1947 by leave of the Board, petitioners, through their counsel, amended their petition so as to include an appeal from the assessments with respect to the descent from Mary I. Fisher of the same property and also upon the same ground as to valuation upon which the original appeal had been based (App. 4, 10). A specific additional ground of appeal was included in the amendment filed January 15, 1947 that the [transfer of] the same real estate was not subject to taxation within a six months' period subsequent to the death of Willis Walter Fisher (App. 5).

The Board of Tax Appeals concluded as a matter of law that the assessments of real property for the fiscal years ended June 30, 1946 and 1947 were not binding upon the Assessor in determining the value of the real property for inheritance tax purposes and that the transfer from Mary I. Fisher to petitioners was subject to inheritance tax notwithstanding the provisions of Title 47, Sec. 1601 (f), D. C. Code 1940 edition (App. 11) and entered a decision accordingly (App. 16).

STATUTES INVOLVED

Title V of the District of Columbia Revenue Act of 1937 (50 Stat. 683, c. 690), as amended by the Act of May 16, 1938 (52 Stat. 360, c. 223) and Title V of the District of Columbia Revenue Act of 1939 (53 Stat. 1111, c. 367; Section 47-1601, et seq., D. C. Code, 1940 edition), the material portions of which are as follows:

(a) Section 1 (a) of Title V, *supra*, which imposes inheritance taxes, is set forth in petitioners' brief, p. 2, insofar as material to this case.

(b) Section 1 (f) of Title V, *supra*, relating to taxation of property transfers where any beneficiary has died within six months after death of the decedent is quoted on p. 8 of petitioners' brief insofar as applicable to this case.

(c) The following portions of Sections 2 and 3 of Title V, *supra*, are material:

"Sec. 2. The tax provided in section 1 shall be paid on the market value of the property or interest therein at the time of the death of the decedent as appraised by the assessor, or, in the discretion of the assessor, upon the value as appraised by the probate court of the District. * * *

"Sec. 3. The appraisal thus made shall be deemed and taken to be the true value of the said property or interest therein upon which the said tax shall be paid, * * *".

SUMMARY OF ARGUMENT

The applicable statutes provide separate and distinct methods for valuing real property for annual real property assessment on one hand and for inheritance taxation on the other. The Assessor used the method prescribed by the inheritance tax statute. Since the tax involved is an inheritance tax, the method used was correct.

Real estate passes to the heir or devisee immediately upon the death of the ancestor or testator. Mary I. Fisher came into possession and enjoyment of the real property here involved prior to her death. No contention is made by petitioners to the contrary. No evidence has been presented to substantiate petitioners' claim for exemption as to an inheritance tax on the transfer of the same property from the first decedent's beneficiary within six months after first decedent's death. The transfers were therefore properly taxed.

ARGUMENT

I

The method used by the Assessor in valuing the property involved for the purpose of inheritance taxation was correct.

Section 2, Title V of the District of Columbia Revenue Act of 1937, as amended, *supra*, provides that the District inheritance tax shall be paid *on the market value of the prop-*

erty or interest therein at the time of the death of the decedent as appraised by the assessor, or, in the discretion of the assessor, upon the value as appraised by the probate court of the District. Section 3 of said Title V provides that the appraisal thus made shall be deemed and taken to be the true value of the property or interest therein upon which the inheritance tax shall be paid. As stated in petitioners' brief (p. 8), "In the instant case, no valuation of the property was made by the Probate Court, and the Assessor, therefore, had only the choice of assessing it at its market value, * * *". The Board of Tax Appeals pointed out (App. 13) that the Assessor appraised the real property involved at \$49,500 and based the inheritance tax on such valuation. The decedent's three-fourths interest in the property was three-fourths of the value as appraised by the Assessor, which amounted to \$37,125. The petitioners do not contend that the aforesaid value of \$49,500 is not the "market value" of the property. They have not averred or offered evidence to show that such value is excessive (App. 7, 13).

The sole contention of petitioners as to the method used by the Assessor in valuing the property transferred to the various beneficiaries is that he must use the value of the property as determined for annual real property assessment purposes. This is plainly not the law. When the Congress reenacted and amended the District inheritance tax law (Title V, *supra*) in the District of Columbia Revenue Act of 1939¹ it enacted, repealed and amended various other tax laws of the District. In Title IV, Sections 3 and 5 of the 1939 Revenue Act the laws relating to the annual assessment of real property were amended.² If the Congress had intended to require the Assessor to use, for inheritance tax purposes, the value of real property as determined by different laws for annual real property assessment purposes, it could have easily and clearly so provided.

¹ 53 Stat. 1085, c. 367.

² 53 Stat. 1108-1110; D. C. Code (1940), Title 47, Secs. 501, 708, 709, 710, 711.

The statutory mechanics for annual real property assessment in the District have been discussed and summarized by this Court³ and by the Board of Tax Appeals.⁴ The method prescribed for the assessment of inheritance taxes is entirely different.⁵ The Board summarized the statutory differences as follows (App. 13, 14):

"* * * The property taxation is made in the first instance, not by the Assessor, but by three members of the Board of Assistant Assessors, subject to review by the Board of Equalization and Review, which is composed of all six assistant assessors, with the Assessor acting as chairman ex officio. Final approval rests with the Commissioners. So that in the task of making the property assessment the Assessor is only the chairman of a board and it is not clear from the statute whether he is entitled to vote. If he is, his vote is but one of seven, whereas the assessment for inheritance tax authorized by section 47-1602 is made solely by the Assessor, or in his discretion based upon the value as appraised by the Probate Court. This can, and in this case did, result in two valuations of the same property as of approximately the same time. * * *"⁶

The Board of Tax Appeals stated in its opinion (App. 13) that it is somewhat incongruous for the same government to assess a property tax on one basis and an inheritance tax on another for the same property. There are logical and compelling reasons why the Congress adopted two different bases of valuing the same property for annual real property taxation and inheritance taxation:

³ *Watrous et al. v. District of Columbia*, 77 U. S. App. D. C. 295, 135 F. 2d 654.

⁴ App. 12-14.

⁵ Sec. 2, Title V, D. C. Revenue Act of 1937, as amended, *supra*.

⁶ The Board refers to "six assistant assessors" as constituting the Board of Assistant Assessors, three of whom are designated to assess real estate. The Board's statement is in accord with the applicable assessment statute. However, as pointed out by this Court in *Watrous et al. v. District of Columbia*, *supra*, the number of assistant assessors has been increased from six to eight (by appropriations statutes), five of whom assess real property.

(1) The District inheritance tax,⁷ like the Federal estate tax,⁸ is imposed upon the "transfer" of property at death. Under both tax laws the tax is to be paid upon the value of the property at the time of the death of the decedent.⁹ Such taxes are levied for the privilege of transmitting or receiving property after death as distinguished from taxes on the property affected. They are excise taxes rather than property taxes. *Fernandez v. Wiener*, 326 U. S. 340, 357, rehearing denied 327 U. S. 814; *Lee v. Commissioner*, 61 App. D. C. 33, 35, 57 F. 2d 399, 401, *cert. den.* 286 U. S. 563.

(2) In petitioners' brief (pp. 4, 5) it is stated that the assessing authorities "shall make an annual valuation of all real estate in the District of Columbia subject to taxation," and when made and approved by the Commissioners, "such valuation shall constitute the basis for all taxation of real estate in this District for the next succeeding year." Such is clearly not the law. Although "assessments" are required to be made annually,¹⁰ the statutes relating to valuation of real property do not provide for "annual valuation". On the contrary, the statutes provide that the valuation of real property made and equalized as provided by law,¹¹ when approved by the Commissioners, shall constitute the basis of taxation not only for the next succeeding year but *until another valuation is made according to law*.¹² It is quite obvious that five assistant assessors could not *actually view* all of the many lots, parts of lots, improvements, etc., subject to real property taxation in the District and perform duties related thereto in determining the value of real property as required by law¹³ each and every year, and the statute clearly shows that the Congress did not intend that the assessors should do so. It is therefore apparent that the value of the property involved

⁷ Title V, Sec. 1, D. C. Revenue Act of 1937, as amended, *supra*.

⁸ Sec. 810, Internal Revenue Code (Title 26, U. S. Code, 1940 ed., Sec. 810).

⁹ Footnote 5, *supra*; Sec. 811, I. R. C., *supra*.

¹⁰ D. C. Code (1940), Title 47, Sec. 702.

¹¹ *Id.*, Secs. 705, 708.

¹² *Id.*, Sec. 709.

¹³ *Id.*, Sec. 705.

may have been and probably was determined by the Board of Assistant Assessors for annual assessment purposes many years ago before property values appreciated, and that such value must remain the same, by the terms of the statute, until another valuation is made according to law.

(3) In determining the "market value" of property as a basis for inheritance taxation, the "assessed valuation" of the property for purposes of ordinary taxation is not the criterion.¹⁴

"The right of the state to an inheritance tax vests at the same moment that the decedent's property vests in those who are entitled by will or under the law to succeed to it, even though the extent of the inheritance cannot be known until the estate has been administered. Inheritance taxes are based upon succession, which takes place at the time of the death of the decedent. *Consequently, the valuation of property for the purpose of assessing the succession tax is to be made as of the date of the decedent's death*, a subsequent appreciation or depreciation in the value of the estate being immaterial." (Emphasis supplied.) 28 *Am. Jur.*, Inheritance, Estate and Gift Taxes, (1940 ed.) Sec. 224.

Counsel for petitioners has provided the answer to his argument on this point in his brief. Even if it is assumed that the Congress intended the method of valuing real property for annual real estate assessments to apply to other forms of taxation, as contended by petitioners (brief, p. 4), it has specifically provided "some other method of determining the value of real estate acquired by inheritance" (Pet. brief, p. 4).¹⁵

The two cases cited by petitioners on this question are not in point or applicable in any respect. *Hunt v. District of Columbia*, 71 App. D. C. 143, 108 F. 2d 10, involved reassessment

¹⁴ 28 *Am. Jur.*, Inheritance, Estate and Gift Taxes (1940 ed.), Sec. 231.

¹⁵ The Board of Tax Appeals stated in its opinion (App. 14) that the provisions of Sec. 47-709, D. C. Code (1940) relate only to property taxation. This, of course, is correct.

of personal property under personal property tax laws then in force. No reassessment is involved in the present proceeding. The case of *L. E. Brueninger & Sons, Inc. v. District of Columbia*, D. C. B. T. A. Dkt. No. 890, 74 Wash. Law Rep. 1145, involved the question whether certain improvements which had been assessed as personal property were realty or personalty and is likewise not in point or applicable to the question here involved.

The contention that petitioners have lost valuable rights of appeal from the valuation of the real property involved (Pet. brief, p. 7) is as fallacious as the other contentions made by petitioners in this proceeding. Petitioners have taken their appeal as to such valuation with respect to inheritance taxation; and they may appeal to the Board of Tax Appeals as to valuation of the same property for annual real property assessment purposes by compliance with the procedure prescribed in the applicable statutes.¹⁶ It is significant to note that petitioners have not contended that the "market value" as determined by the Assessor is excessive. This was pointed out in respondent's motion to dismiss (App. 7) and by the Board of Tax Appeals in its opinion (App. 13). It is obvious that if petitioners believed that the Assessor's determination of the market value of the property at the time of the death of the decedent was excessive, it was vital to petitioners' case to so allege in their petition and adduce evidence to substantiate such allegation.

In petitioners' brief (pp. 4, 5) reference is made to Title 47, Sec. 713, D. C. Code (1940), which requires real estate to be listed and assessed "at not less than the full and true value thereof in lawful money". Petitioners contend that by enacting such provision of law the Congress intended that an "annual valuation of all real estate" should be made at its "full and true value". As pointed out above, the assessment statutes do not provide for the annual valuation of

¹⁶ D. C. Code (1940), Title 47, Secs. 709, 710, 711.

real estate. The first paragraph of Sec. 713, Title 47, of the Code, relating to assessment of property at its full and true value, was enacted by the Act of July 3, 1926.¹⁷ By the Act of June 29, 1922,¹⁸ it was provided that for the fiscal years ending June 30, 1923, 1924, 1925, 1926 and 1927, real property should be taxed "on the full value, and no less". Prior to the 1922 Act real property was assessed at only two-thirds of its true value.¹⁹ If the applicable section (Sec. 4) of the 1926 Act had not been enacted, it is obvious that, beginning with the fiscal year ending June 30, 1928, the assessment of real property would have reverted to the basis of two-thirds of its value. It is stated in the Committee Report on the 1926 Act that Section 4 thereof "more clearly defines full-value assessment than the present law."²⁰ It is therefore clear that the sole purpose of Section 4 of the 1926 Act was to provide henceforth for the taxation of real property at its full value rather than the prior two-thirds value.

II

The assessment of inheritance taxes upon transfer of the property from the second decedent was correct.

Sec. 1(f), Title V of the District of Columbia Revenue Act of 1937, as amended, *supra*, exempts transfers where any beneficiary has died within six months after the death of the decedent (1) before coming into the possession and enjoyment of any property passing to him, and (2) before selling, assigning, transferring, or in any manner contracting with respect to his interest in such property. As to this provision of law peti-

¹⁷ Sec. 4, 44 Stat. 832, 833, c. 759.

¹⁸ 42 Stat. 668, c. 249.

¹⁹ Act of July 1, 1902, Sec. 5, 32 Stat. 590, 616, c. 1352.

²⁰ House Committee Report No. 1459, 69th Congress, 1st Session (Vol. XXX, Reports and Documents Relating to D. C., 1925-1927, p. 1094).

tioners contend only that "they have not come into possession and enjoyment of the real estate taxed, and aver that the said real estate is not subject to taxation, by the District of Columbia, within a six months period subsequent to the death of Willis Walter Fisher" (App. 5). It seems pertinent to point out, first, that it is immaterial whether the petitioners, who are the heirs and beneficiaries of Mary I. Fisher, did or did not come into possession and enjoyment of the real estate involved within six months after the death of Willis Walter Fisher, or whether they exercised any of the rights or privileges enumerated in the statute within such period of time. The question is whether Mary I. Fisher, devisee and beneficiary of Willis Walter Fisher, came into possession and enjoyment of said real estate or exercised any of the aforesaid rights or privileges within six months after the death of Willis Walter Fisher.

The petitioners have not averred or offered evidence to show that Mary I. Fisher, who died five months and thirteen days after the death of Willis Walter Fisher, did not sell, assign, transfer, or in any manner contract with respect to her interest in the property. While it may be assumed that Mary I. Fisher did not sell or transfer the property, since petitioners received it as her heirs, it cannot be assumed that she did not assign or in any manner contract with respect to her interest in such property. This alone is sufficient to sustain the tax.

Petitioners do not contend, either in their amendment to the petition (App. 5) or their brief (pp. 9, 10), that the beneficiary who died (Mary I. Fisher) did not come into possession and enjoyment of the real property involved. It therefore appears unnecessary to further discuss the question. The Board of Tax Appeals correctly interpreted the law in this respect as shown in item 2 of the Board's opinion (App. 14, 15, 16). However, for the convenience of the Court it seems desirable to elaborate on the Board's opinion with further citation of authority.

By the Act of March 3, 1901,²¹ establishing a code of law for the District of Columbia:

"An estate in possession exists when the owner has an immediate right to the possession of the land."

There is no question that Mary I. Fisher had an immediate right to the possession of the property upon the death of Willis Walter Fisher; and the same is true with respect to petitioners upon the death of Mary I. Fisher. The facts in *D'Arcy v. Snell*, 162 Ore. 351, 91 P. 2d 537, 122 A. L. R. 928, are in many respects similar to those in the present case. In that case the devisee died intestate several months after the testator's death and before the estate had been fully administered, leaving as her sole heir a brother of both decedents. The heir, as administrator, paid inheritance taxes on the transfer of real estate from the testator to the devisee and also upon its transfer to him as heir of the devisee. The heir then sought a refund of the taxes paid upon the transfer to the devisee on the ground that the devisee had not received, nor had her estate received, any economic benefit from the devise. The court held that the owner of real property has a benefit with respect to his ability to satisfy his needs that one who is without any property does not enjoy, and stated (91 P. 2d 542):

"The fee title to and ownership of the real property of a decedent passes immediately on his death to his heirs or devisees subject only to the payment of the debts of deceased and the right of the personal representative to possession for the purposes of administration." (Citing cases.)

In *Cunningham v. Rodgers et al.*, 50 App. D. C. 51, 267 F. 609, affirmed 257 U. S. 466, 66 L. ed. 319, 42 S. Ct. 149, this Court said (p. 53):

²¹ 31 Stat. 1189, 1351, c. 854, Sec. 1017; D. C. Code (1940), Title 45, Sec. 807.

"At the common law (which prevails in the District of Columbia) real estate descends to the heir upon the death of the ancestor, and personalty to the administrator. * * *"

Petitioners contend that the real estate involved is subject to a lien for existing debts under the Act of March 3, 1901, *supra*, as amended, (D. C. Code, 1940, Title 18, Secs. 607-612), and that this circumstance affects possession and enjoyment of the property (brief, p. 9). There is no basis for such contention as pointed out in the Board's opinion (App. 15) and, furthermore, the personal property of the testator's estate was more than adequate to pay all his debts except those which were secured by mortgages on the property (App. 9, 10, 16). This Court has held that real estate cannot be sold for the payment of the decedent's debts unless it has been previously determined that personal property is insufficient for such purpose. *Shields v. Shields*, 69 App. D. C. 331, 101 F. 2d 255.

In *Tips v. Bass*, (D. C. Texas, 1927) 21 F. 2d 460, 462, the court, commenting upon a reference to the phrase "possession and enjoyment" in a tax law, said that:

"* * * The word enjoyment means 'that which gives value to property.' *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 581, 15 S. Ct. 673, 39 L. Ed. 759. This includes the beneficial use, interest, and purpose to which the property may be put."

There is no averment or evidence and consequently no Finding as to the use made of the real property by the deceased beneficiary, Mary I. Fisher. It is elementary, however, that such beneficiary, being the owner of the property, enjoyed all the rights and privileges of ownership, including the right to receive income from the property.²² One who has a right to receive income enjoys the benefit of economic gain.²³

²² See *In re Costello's Estate*, 338 Mo. 673, 92 S. W. 2d 723, 726.

²³ Cf. *Helvering v. Horst*, 311 U. S. 112, 116, 85 L. Ed. 75, 61 S. Ct. 144, 131 A. L. R. 655; *Johnson v. United States*, (CCA 9th, 1943), 135 F. 2d 125, 128; *Duran et al. v. Commissioner*, (CCA 10th, 1941), 123 F. 2d 324, 326.

CONCLUSION

In the presentation of this case averments and proof of facts and errors essential to recovery of any part of the taxes assessed and paid under the inheritance tax laws of the District have not been made. The amount of taxes involved in this case is small; but decision of the points involved is very important to proper administration of the tax laws of the District and protection of the District's revenues.

It is respectfully submitted that the decision of the Board of Tax Appeals should be affirmed.

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**BRIEF FOR PETITIONERS AND
JOINT APPENDIX**

IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9592

GEORGE M. FISHER, in his own right and as Administrator
of the Estate of MARY I. FISHER, JOHN W. FISHER and
THORNTON L. FISHER, in their own right, *Petitioners,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

Petition for Review of Decision of the Board of Tax Appeals
for the District of Columbia.

*United States Court of Appeals
for the District of Columbia*

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IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9592.

GEORGE M. FISHER, in his own right and as Administrator
of the Estate of MARY I. FISHER, JOHN W. FISHER and
THORNTON L. FISHER, in their own right, *Petitioners*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Petition for Review of Decision of the Board of Tax Appeals
for the District of Columbia.

BRIEF FOR APPELLANTS.

JURISDICTIONAL STATEMENT.

Jurisdiction of this cause is found in Title 47, Section 2404, Code of Laws for the District of Columbia, 1940 Edition.

SUMMARY OF ARGUMENT.

Appellants contend that in the taxation of real estate, inherited by devise or descent, the Assessor of the District of Columbia is bound by the assessment made by him in accordance with the provisions of Title 47, Section 702, 705, 706, 709, 713 of the District of Columbia Code, 1940 Edition, there being no provision for a re-assessment of real estate in the event of death, and, further that Title 47, Section 1601(f) of the D. C. Code, 1940 Edition, prohibits the levy of any inheritance tax in this District, where the same property has been the subject of an inheritance tax within a six month period, and before a beneficiary has come into possession and enjoyment of any property passing to him, and before selling, assigning, transferring, or in any manner contracting with respect to his interest therein.

ARGUMENT.

The facts in this case are as stated in the opinion of the Board of Tax Appeals. The appellants contend that in the making of assessments and the levying of taxes, the District of Columbia has only such power as is expressly granted to it by Act of Congress, and that Statutes providing for the assessment and taxation of property must be strictly construed and that no powers with reference to any such statute are granted by inference.

Title 47, Section 1601 of the 1940 Edition of the D. C. Code provides:

“Taxes shall be imposed in relation to estates of decedents, the shares of beneficiaries of such estates and gifts as hereinafter provided:

(a) All real property and tangible and intangible personal property or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship * * * shall be subject to a tax as follows:

One (1) per centum of so much of said property as is in excess of \$5000.00 and not in excess of \$50,000.00
* * * .”

Subject to certain exemptions thereafter granted, the foregoing is the statute upon which the tax liability of the appellants is based.

The method by which valuation of the property of a decedent shall be determined is provided in Title 47, Section 1602, D. C. Code, 1940 Edition, which provides as follows:

“The tax provided in Title 47, Section 1601, shall be paid on the market value of the property or interest therein at the time of the death of the decedent, as appraised by the Assessor, or in the discretion of the Assessor, upon the value as appraised by the Probate Court of the District.”

Title 47, Section 705 of the District of Columbia Code provides that the Board of Assistant Assessors shall determine the value of each piece of real estate in the District of Columbia, and Section 706, Title 47, of the District of Columbia Code provides that said Board of Assistant Assessors shall, annually, on or before the first Monday of January, deliver to the assessor of the District of Columbia, the value of such real property subject to taxation in this District.

Title 47, Section 709 of the District of Columbia Code provides:

“The valuation of all real property in the District of Columbia shall be completed not later than the first Monday of May, annually, and shall be approved by the Commissioners of the District of Columbia not later than July 1, annually, and when approved by the Commissioners, shall constitute the basis of *taxation* for the next succeeding year and until another valuation is made, according to law, except as hereinafter provided.” (Italics supplied)

“Any person aggrieved by an assessment, equalization, or valuation made, may, within 90 days after October 1, of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation, in the same manner and to the same extent as provided in Sections 47-2403, 47-2404, Provided, however, that such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided.”

It will be noted that the provisions of the Code provides without distinction as between Inheritance Taxes and Real Estate Taxes, that all real estate shall be assessed for purposes of *taxation* on or before the First Monday of May, annually, and that when approved by the Commissioners of the District of Columbia, not later than July 1, annually, that this valuation shall constitute the basis of *taxation* for the next succeeding year. The statute uses the term *taxation*, and hence must be intended to include all forms of taxes authorized for levy by the District of Columbia, unless another means of valuation is provided, and it must be intended to include inheritance taxes collectable by the District on the inheritance of real estate received by a beneficiary, unless Congress has provided some other method of determining the value of real estate acquired by inheritance.

That this must be so is evidenced by the provisions of Title 47, Section 713, of the D. C. Code, 1940 Edition, which provides:

“All real estate in the District of Columbia subject to *taxation* including improvements thereon, shall be listed and assessed at not less than the full and true value thereof, in lawful money (*italics supplied*).”

It is apparent, from these provisions, that Congress intended that the Assessor of the District of Columbia and the Board of Assistant Assessors, acting under him, shall

make an annual valuation of all real estate in the District of Columbia subject to taxation, at the full and true value thereof on or before the first Monday of May, annually, and that when such valuation is made, and approved by the Commissioners of the District of Columbia, that such valuation shall constitute the basis for all taxation of real estate in this District for the next succeeding year. It is a well known principal of law that all public officials to whom are assigned the performance of a definite duty, are assumed to have performed that duty, unless the contrary shall be expressly established. What then is the situation presented by this case. The Assessor of the District of Columbia determined the value of this real estate for the fiscal years ended June 30, 1946 and 1947, at \$29,704.00. This fact is not disputed by the District of Columbia and is found to be a fact by the Board of Tax Appeals, as stated in the opinion of the Board at lines 4, 5, 6, page 3:

“The assessed value for the property tax on the real estate involved in this appeal for the fiscal years ended June 30, 1946 and 1947, was \$29,704.00.”

Having determined that the value of this property, for the years 1946 and 1947 was \$29,704.00, it must be assumed that the Assessor, in the absence of a contrary showing, in making this assessment for the year 1946 and 1947, of \$29,704.00, had performed his duty and had valued this property at its full and true value, and the District of Columbia was willing and did levy real estate taxes on this property, based upon this valuation.

Upon the death of Willis Walter Fisher, which occurred on May 13, 1946, or 13 days after the time limit within which all real estate in the District of Columbia shall have been valued for the ensuing year, the executor and the heir of Willis Walter Fisher filed an inheritance tax return, using as the basis of valuation for the real estate inherited, the valuation as determined by the Commissioners of the District of Columbia, on July 1, 1946. Upon the filing of this

return, the Assessor of the District of Columbia, seeing an opportunity to gouge a few more dollars from a taxpayer, refused to accept the valuation of the real estate in question at the value as determined by himself and the District Commissioners, and *for the purpose of levying an inheritance tax*, appraised the property at \$49,500.00 and based the inheritance tax on the last named valuation. Here we have the rather ridiculous situation, that the same man charged with the duty of valuing real estate at its full and true value in January of each year, and charged with the further duty of reporting such valuation to the District Commissioners on or before the first Monday of May, and having done so, and having his valuation adopted by the Commissioners of the District of Columbia on July 1, 1946, rejects his own assessment on September 10, 1946, and places a new value on the same property in the amount of \$49,500.00, thereby enabling the District to collect from the taxpayer the additional sum of \$135.79, and then to maintain his record of inconsistency when he makes the 1947 property valuation, he again adopts his original 1946 assessment of \$29,704.00. It would be difficult to imagine a more preposterous and untenable situation than where the Assessor states officially that in May, 1946, the property was worth \$29,704.00, then in September, 1946, states that it is worth \$49,500.00 and then in May, 1947, states that it is again worth only \$29,704.00. A more palpable tax grab cannot be conceived.

The Board of Tax Appeals recognized the difficulty of this position, stating in its opinion, in Line 12, Page 3:

“It is somewhat incongruous for the same Government to assess a property tax on one basis and an inheritance tax on another basis for the same property.”

Petitioners contend that such a situation is more than incongruous, that it is in fact unconscionable. A taxpayer in the District has the right to know the basis on which his property will be valued, he has a right to know what that

valuation is, and he has certain rights of appeal given by the District of Columbia Code from that valuation when made. If he accepts the valuation as made, he has a further right to assume that it will not be reassessed unless express provision is made therefor. This Court has adopted this view in the case of *Hunt v. D. C.*, 71 App. D. C. 143, where the Court stated:

“It is not the policy of the law to make reassessments. Unless the taxing statute expressly provides for a re-assessment, such action is void.”

And this Court stated further, in the same case, at Page 146:

“It is not sufficient that the Assessors, through lack of information or otherwise, have erred in their judgment of quantity, quality and value of the thing assessed * * * If the Assessors have once assessed, that assessment can not be revised by a supplemental assessment.”

A taxpayer contemplating the effect of taxes on his estate, after his death, and all persons contemplating the distribution of their estate must take their tax liability into consideration, have the right to rely on the assessment made by the Commissioners of the District of Columbia, at their annual assessment, and to calculate the tax liability of his estate on that basis. It would be manifestly unjust to make it impossible for a taxpayer to determine the approximate tax liability of his estate, and to leave such valuation to an arbitrary and capricious valuation made contrary to law, after his decease. Not only that but the taxpayer has lost valuable rights for as provided in Title 47, Section 709 *supra* a person aggrieved by an assessment may appeal therefrom provided he has first made his complaint to the Board of Equalization and Review. This right this taxpayer had lost because he accepted the valuation as made and made no complaint.

The inheritance tax is required to be paid on the market value of the property at the time of death as appraised by the assessor or in the discretion of the Assessor, upon the value as appraised by the Probate Court. In the instant case, no valuation of the property was made by the Probate Court, and the Assessor, therefore, had only the choice of assessing it at its market value, which value had been determined by the District Commissioners on July 1, 1946, at \$29,704.00 to be the full and true value of this property.

The Board of Tax Appeals of this District, in *L. E. Brueninger & Sons, Inc. v. D. C.*, Docket No. 890, in the Board of Tax Appeals, recognized and followed the principle laid down by this Court in the Hunt case, but in the instant case has not seen fit to follow this decision.

The other question involved in this case is the right of the District of Columbia to levy an inheritance tax on property passing to beneficiaries, which property has previously been taxed for inheritance tax purposes within a six months period.

The pertinent provisions of the D. C. Code applying to this phase of this appeal is Title 47, Section 1601 (f), which provides as follows:

“Where any beneficiary has died or may hereafter die within six months after the death of the decedent, and before coming into the possession and enjoyment of any property passing to him, and before selling, assigning, transferring or in any manner contracting with respect to his interest in such property, such property shall be taxed only once, * * *.”

Mary I. Fisher, the sole beneficiary under the will of Willis Walter Fisher, who died on May 13, 1946, died intestate on October 26, 1946, within a six months period subsequent to the death of Willis Walter Fisher. The same real estate descended to George M. Fisher, John W. Fisher and Thornton L. Fisher, the appellants herein, by virtue of the intestacy of their mother, Mary I. Fisher, and the appellants, in due course, filed an inheritance tax return,

using as a valuation the same basis as used by their mother, in filing the inheritance tax return on the estate of their father, Willis Walter Fisher, to wit, its assessed valuation of \$29,704.00, and claimed an exemption from taxation under the above referred to title 47, Section 1601 (f), inasmuch as the subject property had been taxed for inheritance tax purposes, within a six month period. Again, the assessor rejected the valuation of the property, used by the appellants and again substituted the value of \$49,500.00 and likewise rejected their contention that the property was exempt from taxation as being within the six month period, in which contention he was upheld by the Board of Tax Appeals.

It is the contention of the appellants that while the title to the property in question vested immediately in them, upon the death of their mother, Mary I. Fisher, that the mere vesting of such title did not confer upon them possession and enjoyment of the property as described in Title 47, Section 1601(f). The enjoyment and possession of property is composed of many elements, among them, to use it as one wills and to alienate it without restriction. In 22 Ruling Case Law 83, the principle is stated:

“One of the principal elements of property is the right of alienation or disposition.”

In the same volume, on Page 38, property is described as follows:

“Property is composed of certain constituent elements, to wit, the unrestricted right of use and disposal.”

See also *Bicocchi v. Casey Swasey Co.*, 42 S. W. 963. By law in the District of Columbia, Title 18, Sections 607, 613, the real estate of the decedent is subject to a lien for existing debts, which lien may continue until the debts are barred by the statute of limitations.

The above fact was likewise recognized by the Board of Tax Appeals in its opinion at Page 4. It is quite true that the appellants were in a position to alienate the property in question, but any such alienation would have been subject to the debts of the decedent, and it will certainly be immediately recognized that the value which would be paid for such a deed or grant would be trivial in comparison with the value of the property freed from liability for the debts of the decedent.

It is the position of the appellants that Title 47, Section 1601 (f) expressed a clear intent as in the Federal Estate Tax Law, that property passing by inheritance or devise should not be taxed twice within a six months period, unless the beneficiary to whom it had first passed had taken positive action in connection with its use and disposal. In this case, the appellants had done nothing other than to maintain the property in the same condition in which it had passed to their mother. Hence, appellants contend that the Board of Tax Appeals erred:

(1) in holding that the Assessor of the District of Columbia had the right to re-value the real estate of Willis Walter Fisher upon his death and to increase the valuation from \$29,704.00 to \$49,500.00.

(2) that the Board of Tax Appeals erred in holding in the case of Mary I. Fisher that the Assessor had the right to re-value the real estate upon her death, and to increase the valuation from \$29,704.00 to \$49,500.00,

(3) that the Board of Tax Appeals erred in holding that the property passing under the will of Willis Walter Fisher could be taxed twice within a six month period.

VINCENT A. SHEEHY, JR.,
830 Wash. Loan & Trust Bldg.,
Washington 4, D. C.,
Attorney for Appellants.

APPENDIX

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IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9592.

GEORGE M. FISHER, in his own right and as Administrator
of the Estate of MARY I. FISHER, JOHN W. FISHER and
THORNTON L. FISHER, in their own right, *Petitioners*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Petition for Review of Decision of the Board of Tax Appeals
for the District of Columbia.

JOINT APPENDIX.

Petition.

2 The above named petitioners petition for a cancellation (or reduction) of an assessment of taxes made against them and allege as follows:

1. The petitioners, George M. Fisher, John W. Fisher, and Thornton L. Fisher are all residents of the District of

Columbia, residing at the Westchester Apartments, 1401 Sheridan St., N. W., and 1312 U St., S. E., respectively, and constitute all of the heirs at law and next of kin of Mary I. Fisher, who died on the 26th. day of October, 1946, and against whom as executrix of the estate of Willis Walter Fisher, the tax in controversy was levied, the tax in controversy having been paid by your petitioners under protest, in order to discharge the lien against the inherited property, of which they are now the owners.

2. The tax in controversy is an Inheritance Tax on the estate of Willis Walter Fisher, and is in the amount of One Hundred Thirty-Five Dollars and Seventy-Nine Cents (\$135.79).

3. The notice of assessment was dated September 10, 1946, and the tax was paid by your petitioners under protest in writing on November 12, 1946, as will appear from the copy of the notice of assessment and accompanying letter hereto attached as Exhibits "A" and "B".

3 4. The assessment of the tax set forth on the notice of assessment is based upon the following errors:

The assessor of the District of Columbia refused to accept the assessed valuation of the real estate which was the subject of the Inheritance, as determined by the assessor in his annual assessment, and instead arbitrarily increased the assessment by Fourteen Thousand Eight Hundred Forty-Seven Dollars (\$14,847.00).

5. Petitioner relies on, as a basis for this proceeding, the provisions of the District of Columbia Code determining the method which the assessor of the District of Columbia shall use in determining the valuation of property subject to Inheritance in the District of Columbia Title 47, Section 702, of the District of Columbia Code provides as follows:

"Assessments of real estate in the District of Columbia for purposes of taxation shall be made annually in the same

manner and subject to the same limitations as heretofore provided by law for making biennial assessments."

Title 47, Section 705 of the District of Columbia Code provides that the Board of Assistant Assessors shall determine the value of each piece of real estate in the District of Columbia, and Section 706, Title 47, of the District of Columbia Code provides that said Board of Assistant Assessors shall, annually, on or before the first Monday of January, deliver to the assessor of the District of Columbia, the value of such real property subject to taxation in the District.

Title 47, Section 709 of the District of Columbia Code provides:

"The valuation of all real property in the District of Columbia shall be completed not later than the first Monday of May, annually, and shall be approved by the Commissioners of the District of Columbia not later than July 1, annually, and when approved by the Commissioners, shall constitute the basis of taxation for the next succeeding year and until another valuation is made, according to law, except as hereinafter provided.

4 Any person aggrieved by an assessment, equalization, or valuation made, may, within 90 days after October 1, of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation, in the same manner and to the same extent as provided in Sections 47-2403, 47-2404, Provided, however, that such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided.

Title 47, Section 713, of the District of Columbia Code, provides:

"All real estate in the District of Columbia subject to taxation, including improvements thereon, shall be listed and assessed as not less than the full and true value thereof in lawful money.

Title 47, Section 1602 of the District of Columbia Code, provides as follows:

"The tax provided in Section 47-1601, shall be paid on the market value of the property or interest therein at the time of the death of the decedent as appraised by the assessor or, in the discretion of the assessor, upon the value as appraised by the probate court of the District of Columbia.

Wherefore, the petitioners pray, that this Board may hear the proceedings and may assess a tax against the estate of the said Willis Walter Fisher, in accordance with the valuation as determined by the annual assessment made by the assessor of the District of Columbia, in accordance with the provisions of the District of Columbia Code above quoted.

* * * * *

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Filed Jan 15 1947

Amendment to Petition.

Comes now the petitioners, by their counsel, Vincent A. Sheehy, Jr., with leave of the Board having been first obtained and amend their petition as follows:

1. The petitioners further allege that their mother, Mary I. Fisher, died in the District of Columbia, on the 26th day of October, 1946, less than six months after the decease of their father, Willis Walter Fisher.

2. That your petitioners filed an Inheritance Tax Return on the estate of the said Mary I. Fisher, showing no tax due thereon.

3. That under date of December 4, the assessor of the District of Columbia levied an additional tax on the estate of the said Mary I. Fisher, in the amount of Forty-One Dollars and Sixty-One Cents (\$41.61), upon the same basis as the assessment made and which is the subject of complaint in the original petition filed herein.

4. That your petitioners have paid the tax levied under protest, on December 19, 1946, as will appear from the

copy of the notice of assessment attached hereto as Exhibit A.

14 5. Petitioners rely upon the same authorities as set forth in the original petition, and upon the further fact that they have not come into possession and enjoyment of the real estate taxed, and aver that the said real estate is not subject to taxation, by the District of Columbia, within a six months period subsequent to the death of Willis Walter Fisher.

Wherefore, the petitioners pray, that this Board may hear the proceedings and may assess a tax against the estate of the said Mary I. Fisher, in accordance with the provisions of the District of Columbia Code.

VINCENT A. SHEEHY, JR.

Vincent A. Sheehy, Jr.

830 Washington Loan and Trust Bldg.

Counsel for Petitioners.

District of Columbia, ss:

Vincent A. Sheehy, Jr., being first duly sworn upon his oath, deposes and says; that he has read the foregoing amendment to the petition, that the facts therein stated of his own knowledge are true, and those stated upon information and belief, he believes to be true.

VINCENT A. SHEEHY, JR.

Vincent A. Sheehy, Jr.

830 Washington Loan and Trust Bldg.

Counsel for Petitioners.

Subscribed and sworn to before me this 14th day of January, 1947.

FRANCIS M. WILCOX

Notary Public, D. C.

* * * * *

Filed Dec. 18, 1946

Motion to Dismiss.

Respondent by its counsel moves the Board to dismiss the petition filed herein on the ground that said petition fails to state a claim upon which relief can be granted, for the following reasons:

The sole question raised by the petition is whether the Assessor for the District of Columbia is bound to accept for inheritance tax purposes the valuation of real property in the District of Columbia as determined by the Board of Assistant Assessors and adjusted by the Board of Equalization and Review in relation to the same property for real estate assessment purposes.

The responsibility for determining the value of real property in the District of Columbia for real estate assessment purposes is imposed upon an eight-man Board of Assistant Assessors whose determination of value is subject to review by a Board of Equalization and Review composed of the Assessor, the Deputy Assessor, and the Board of all of the Assistant Assessors. Any determination of value for real estate assessment purposes thus made constitutes the basis of real estate taxation for the next succeeding year and until another valuation is made according to law applicable to the assessment of real estate.

The value of real property in the District of Columbia for inheritance tax purposes is the market value of the property, or interest therein "at the time of the death of

46 the decedent as appraised by the assessor or, in the discretion of the assessor, upon the value as ap-

praised by the probate court of the District." For inheritance tax purposes neither the Board of Assistant Assessors nor the Board of Equalization and Review has any responsibility with respect to determining the market value of the property involved at the time of the death of the decedent.

There is no allegation in the petition filed herein that the market value of the property involved as determined by the Assessor is excessive.

For the foregoing reasons it is respectfully submitted that the petition should be dismissed.

* * * * *

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Filed January 21, 1947

Answer.

Comes now the respondent and for answer to the petition and amendment to the petition filed herein states as follows:

1. Answering Paragraph 1 of the petition, respondent admits that the petitioners are all residents of the District of Columbia and constitute all of the heirs at law and next of kin of Mary I. Fisher, who died on the 26th day of October, 1946. In further answer to Paragraph 1 of the petition, respondent states that the tax involved was assessed against the share of Mary I. Fisher under the will of Willis Walter Fisher, who died on the 13th day of May, 1946, and, further, that the remainder of said Paragraph 1 states conclusions of law which respondent is not called upon to answer.

2. Answering Paragraph 2, respondent denies that the tax in controversy is an inheritance tax on the estate of Willis Walter Fisher but admits that the amount of tax involved is One Hundred Thirty-five Dollars and Seventy-nine Cents (\$135.79). In further answer to Paragraph 2, respondent states that the tax in controversy is an inheritance tax assessed upon the transfer of property to Mary I. Fisher under the will of Willis Walter Fisher, deceased.

3. Respondent admits Paragraph 3 of the petition.

4. Answering Paragraph 4 of the petition, respondent states that the tax involved was determined on the market value of the property transferred to Mary I. Fisher under the will of Willis Walter Fisher, deceased, at the time of the death of the decedent as appraised

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by the Assessor. Respondent denies that such determination was erroneous or arbitrary.

5. Answering Paragraph 5 of the petition, respondent states that said Paragraph 5 is argumentative and states petitioners' theory of the law which respondent is not called upon to answer.

6. In further answer to the petition respondent states that said petition fails to state a claim upon which relief can be granted because it does not contain clear and concise numbered statements of the facts upon which the petitioners rely as required by Rule 6(a)(5), Rules of Procedure before the Board of Tax Appeals for the District of Columbia.

7. Respondent admits Paragraphs 1, 2 and 4 of the amendment to the petition.

8. Answering Paragraph 3 of the amendment to the petition, respondent denies that the Assessor levied an additional tax on the estate of Mary I. Fisher. In further answer to said Paragraph 3 of the amendment to the petition, respondent states that on December 4, 1946, the Assessor assessed an inheritance tax in the amount of \$13.87 against each of the petitioners upon the transfer of real and personal property to them by reason of the death of Mary I. Fisher; that the real property so transferred was the same property which had been transferred from Willis Walter Fisher to Mary I. Fisher; and that said tax was determined on the market value of the property so transferred at the time of the death of the decedent, Mary I. Fisher, as appraised by the Assessor.

9. Answering Paragraph 5 of the amendment to the petition, respondent states that said Paragraph 5 states conclusions of law which respondent is not called upon
49 to answer.

10. In further answer to the amendment to the petition, respondent states as follows:

(a) The Board of Tax Appeals for the District of Columbia has no jurisdiction to hear or determine any ques-

tion presented by said amendment because it relates to a different assessment made upon the transfer of property to different persons based upon different facts.

(b) The amendment to the petition is not verified by petitioners and fails to state a claim upon which relief can be granted because it does not contain (1) clear and concise assignments of error alleged to have been committed by the assessing authority, and (2) clear and concise numbered statements of the facts upon which the petitioners rely, as required by Rule 6(a)(4) and (5), Rules of Procedure before the Board of Tax Appeals for the District of Columbia.

* * * * *

15

Filed May 16 1947

Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Willis Walter Fisher died May 13, 1946, being at the time of his death the owner of an undivided three-fourths interest in the real estate in the District of Columbia known as Lots 804, 805, 806, 276, 277, 278 and 279 in Square 5768. He died testate and by his will devised all of his estate, real and personal, to Mary I. Fisher, his wife, who was named as his executrix.

2. The valuation placed upon said real estate for the purposes of assessment and taxation for the fiscal year ending June 30, 1946 was \$29,704 for the entire interest, and \$22,278 for decedent's three-fourths interest therein.

3. On July 15, 1946 Mary I. Fisher, as executrix as aforesaid, filed an inheritance-tax return with the Assessor with respect to her share as sole beneficiary of the estate of said decedent. In that return she listed the three-fourths interest in said real estate at a valuation of \$22,278, and mortgages, and accounts receivable of \$991.27, aggregating \$23,269.27, as the total assets of the estate, and mortgages on said real estate aggregating \$19,029.80 and funeral expenses and an indebtedness for medical service ag-

16 gregating \$507, a total of \$19,536.80 as the total liabilities of the estate. On September 10, 1946 the Assessor assessed an inheritance tax upon the share of the said Mary I. Fisher. In the determination of the value of her share, the Assessor valued said three-fourths interest in said real estate at \$37,125.

4. Mary I. Fisher died on October 26, 1946, intestate, survived by the petitioners, her sons, George M. Fisher, John W. Fisher and Thornton L. Fisher, as her heirs. George M. Fisher, as administrator of her estate, paid the tax under protest in writing on November 12, 1946.

5. At the time of her death, Mary I. Fisher was the owner of the same three-fourths interest in the same real estate which had belonged to Willis W. Fisher at the time of his death. The real-estate tax assessment thereon was the same for the fiscal year ending June 30, 1947 as it had been for the preceding fiscal year. On November 29, 1946 George M. Fisher, as administrator of Mary I. Fisher, filed an inheritance-tax return showing distribution of the estate of Mary I. Fisher to petitioners as her heirs. On December 4, 1946 the Assessor made an assessment of inheritance tax of \$13.87, upon the share of each of the petitioners. In the determination of the value of the petitioners' shares of the estate, the Assessor computed the value of the three-fourths interest in said real estate to be \$37,125. These taxes were paid under protest in writing on December 19, 1946.

6. On December 6, 1946 petitioners appealed from the \$135.79 assessment levied with respect to the devise of Willis W. Fisher, upon the ground that the Assessor was without right to value the real estate otherwise than as determined for the purposes of real-estate taxation for the fiscal year in which the said Willis W. Fisher died.

7. On January 15, 1947, by leave of the Board, petitioners amended their petition so as to include an appeal from the assessment with respect to the descent from Mary
17 I. Fisher, and also upon the same ground as to valu-

ation upon which the original appeal as to Willis Walter Fisher had been based.

8. Mary I. Fisher did not die before coming into the possession and enjoyment of the real estate subsequently inherited by petitioners.

CONCLUSIONS OF LAW

1. The assessments of the real estate involved, for the fiscal years ending June 30, 1946 and June 30, 1947, were not binding upon the Assessor in determining the value of the real estate for the inheritance taxes.

2. The transfer from Mary I. Fisher to petitioners was subject to inheritance tax notwithstanding the provisions of Code section 47-1601(f).

Decision will be entered for respondent.

LAWRENCE KOENIGSBERGER
Lawrence Koenigsberger
Member Sole,
Board of Tax Appeals for
the District of Columbia

* * * * *

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Filed May 16 1947

Opinion.

This is an appeal from two inheritance-tax assessments, one arising from the transfer at death of real estate from Willis W. Fisher, who died May 13, 1946, to Mary I. Fisher, and the other arising from the transfer by death of the same real estate from Mary I. Fisher, who died intestate October 26, 1946 to petitioners.

Petitioners make two contentions: (1) As to both transfers, that the valuation placed on the real estate as the basis of the inheritance tax was in excess of the assessment thereof for purposes of property taxation for the fiscal years in which the decedents died; (2) As to the transfer from Mary I. Fisher, that it was not subject to tax, by reason of the provisions of D. C. Code section 47-1601(f).

1.

The method of valuation of real estate for the property tax is prescribed by law as follows: The Assessor is to prepare the annual tax ledgers, and upon completion thereof to prepare a statement showing the total amount of the assessment and the total amount of taxes to be collected (Code sec. 47-601); to prepare and keep all records and accounts relating to the bookkeeping, accounting, and collection of taxes and assessments; to prepare and issue bills for taxes and assessments; to prepare lists of real estate sold for non-payment of taxes or assessments, to
19 furnish certified statements of taxes and assessments; and to prepare lists of taxes on real property subject to taxation; and to prepare and retain in his office tax accounts showing the assessed owners, amount, description and value of real property listed for taxation, sec. 47-603.

The Commissioners of the District appoint a board of assistant assessors composed of six persons, sec. 47-604, three of whom are designated by the Assessor for the assessment of real estate and the other three to assess personal property, sec. 47-605. All members together with the Assessor, constitute the Board of Equalization and Review of real estate assessments. The Assessor is ex officio chairman of the several boards, sec. 47-605.

The Board of Assistant Assessors, from view and from the best sources of information in its reach, determines the value of each separate tract of real property and of the improvements thereon, sec. 47-705. On or before the first Monday of January of each year the Board of Assistant Assessors delivers to the Assessor a return of the amount, description and value of the real property subject to be listed for taxation. The Assessor and Deputy Assessor and the Board of all of the assistant assessors, with the Assessor as chairman, compose a Board of Equalization and Review. Five of the board constitute a quorum and in the absence of the Assessor a temporary chairman may

be selected. The Board of Equalization and Review is required to equalize the valuations made by the board of assistant assessors, so that each lot and the improvements thereon are entered upon the tax list at their value in money, sec. 47-708. They may hear such complaints as may be made and may raise or reduce the valuations made by the board of assistant assessors, sec. 47-708. After the valuations have been made and equalized they are approved by the Commissioners not later than July 1, annually, and, when so made, constitute the basis of taxation for the next succeeding year and until another valuation is made, sec. 47-709. All real estate and improvements thereon are required to be assessed at not less than the true value thereof in lawful money, sec. 47-613.

20 The inheritance tax is required to be paid on the market value of the property at time of death as appraised by the Assessor, or, in the discretion of the Assessor, upon the value as appraised by the Probate Court. The assessed value for the property tax on the real estate involved in this appeal for the fiscal years ended June 30, 1946 and 1947 was \$29,704. The Assessor, for the purposes of inheritance tax, appraised it at \$49,500, and based the inheritance tax on the last-named valuation. Petitioners contend that he is bound by the valuation made for the property tax. They have not averred or offered evidence to show that the \$49,500 valuation was excessive.

It is somewhat incongruous for the same government to assess a property tax on one basis and an inheritance tax on another basis for the same property. However, Congress is competent to do so if it sees fit. The problem is to determine the Congressional intent. Petitioners contend that the Assessor, having made the property-tax assessment, is restricted to a choice between the value so determined and a Probate Court appraisal. But the premise is fallacious. The property taxation is made in the first instance, not by the Assessor, but by three members of the Board of Assistant Assessors, subject to review by the

Board of Equalization and Review, which is composed of all six assistant assessors, with the Assessor acting as chairmen ex officio. Final approval rests with the Commissioners. So that in the task of making the property assessment the Assessor is only the chairman of a board and it is not clear from the statute whether he is entitled to vote. If he is, his vote is but one of seven, whereas the assessment for inheritance tax authorized by section 47-1602 is made solely by the Assessor, or in his discretion based upon the value as appraised by the Probate Court. This can, and in this case did, result in two valuations of the same

21 property as of approximately the same time. When it is considered that valuations are not matters of mathematical certainty, but rest to a great extent in opinion, such differences are not patently absurd. The provision of section 47-709 that the valuations of real estate made and equalized and approved by the Commissioners, shall constitute the basis of taxation for the next succeeding year, and until another valuation is made, must therefore be held to mean that they shall so constitute the basis for only property taxation, to which that section relates. It is inconceivable that if Congress had intended that the property-tax assessment should govern the inheritance-tax assessment it would not have tied the language of section 47-1602 in with the provisions of law relating to property taxes instead of using the markedly different language which it did.

2.

Section 47-1601(f) provides that where any beneficiary has died within six months after the death of the decedent and before coming into the possession and enjoyment of any property passing to him and before selling, assigning, transferring or in any manner contracting with respect to his interest therein, the property shall be taxed only once. Immediately upon the probate of the will of Willis W. Fisher, title to the property was vested in his widow as

devisee, and she became the owner of it and entitled to possession. There is nothing in the record to show that there was any obstacle to such possession. Petitioners, however, contend that she did not enter into the enjoyment of it, because it was charged with a lien for the debts of her testator. If such a lien prevents a devisee or heir from having enjoyment of the property within the meaning of section 47-1601(f), the condition precedent for tax exemption would be wholly superfluous, as the real estate of a decedent is always subject to a lien for his debts, Code sections 18-607, 18-612, which lien may continue until the debts

are barred by the statute of limitations, which may
 22 be up to three years or fifteen years, depending on the nature of the obligation, sec. 28-2405. There is no provision of law for discharging the real estate from the lien of such debts within a six-months period, although the executor or administrator may be relieved of personal liability with respect to any claim of which he had no knowledge or notice, where, after the lapse of one year after the date of his letters he has paid away assets of the estate, after having published a notice to creditors at least six months before making distribution, sec. 26-311.

A good deal could be said for the advisability of an exemption without the qualifications contained in section 1601(f), similar to that applicable to the Federal estate tax, I.R.C. section 812(c), but Congress chose to limit the exemption to those cases where there had been no possession or enjoyment by the first transferee. Furthermore the existence of a lien for debts does not prevent the enjoyment of property any more than the existence of a mortgage, deed of trust, judgment lien or tax lien. Persons owning real estate subject to such liens could not be said to have no enjoyment of their property due to the mere existence of the lien. The existence of a lien for the debts of a deceased owner, being for an unknown amount, although it would not legally prevent a sale, might make it difficult to find a purchaser, but section 47-1601(f) expressly contem-

plates that, in order for the exemption therein contained to apply, the property shall not have been sold within the six-months period, and therefore a sale of the property during the six-months period would automatically render section 47-1601(f) inapplicable.

Having regard to the practical aspects of this particular case, it is to be noted that the real estate was subject to mortgages which were subtracted from the value of the property in determining the net value of the estate for the inheritance tax, and there were no other debts except funeral expenses and medical services aggregating
 23 \$507, for the satisfaction of which the personal property of the estate was more than adequate.

The conclusion follows that Mary I. Fisher came into the possession and enjoyment of the property after the death of her testator within the meaning of section 47-1601(f) and the tax on the transfer from Mary I. Fisher to petitioners was properly assessed.

Decision will be entered for the respondent.

* * * * *

24

Filed May 16 1947

Decision.

This proceeding came on to be heard upon the petition filed herein, and upon consideration thereof and of the evidence adduced at the hearing on said petition, it is, by the Board, this 16th day of May, 1947,

Adjudged and Determined, That the assessments of inheritance taxes herein appealed from, be, and they are hereby, affirmed.

* * * * *

25

Filed Jun 11 1947

**Petition of Taxpayer for Review by the United States
Court of Appeals for the District of Columbia of a De-
cision by the Board of Tax Appeals for the District of
Columbia.**

* * * * *

NATURE OF THE CONTROVERSY

(a) The controversy involves the right of the Assessor of the District of Columbia to assess decedent's real estate located in the District of Columbia and passing either by will or intestacy at the value determined by the Assessor at the time of death, and differing from the annual
26 assessment made by the Assessor in accordance with the provisions of the D.C. Code, and the right of the Assessor of the District of Columbia to levy an inheritance tax on the interests of the heirs to real estate located in the District of Columbia, which has been previously taxed by said Assessor within a six months period.

* * * * *

Excerpts from Proceedings.

39 Mr. Updegraff: The Government now renews its motion to dismiss filed December 18, 1946, on the grounds stated in that written motion. The Board gave the Government the right to do that in order to make said motion. We further move to dismiss on the grounds that the Petitioner not only has failed in the burden of proof, but that he has presented evidence here solely with respect to the method of valuing the property which is the subject of transfer.

* * * * *

40 We further would like to call the Board's attention to the fact that the amended petition in no wise relates to the assessment referred to in the original petition filed. It is an entirely new petition and has no reason to be

in this original petition at all. If anything, it is a new action, a new assessment against new parties.

Further, the amendment to the petition does not comply with the rules of the Board and should be dismissed because it does not contain proper allegations of jurisdiction as to the averments of fact, nor is it verified by the
 41 petitioners. For that reason, we ask the Board to dismiss the proposed amendment to the original petition.

* * * * *

Petitioner's Exhibit No. 27.

42

September 26, 1946

Mr. Vincent A. Sheehy, Jr.
 900 F Street, N.W.
 Washington, D. C.

In re: Estate of Willis W. Fisher

Dear Sir:

In reply to your letter of September 24th in connection with the above captioned estate we beg to advise that the increase in the inheritance taxes billed, over the amount reported, was occasioned by an increase in the value of the real estate reported.

The fair market value of the three-fourths interest in said real estate was determined by this office to be \$31,365.00, an increase of \$14,847.00 over the assessed values reported.

This matter was discussed with you over the telephone and no other changes were made in our audit.

Very truly yours,

C. P. MILLER, JR.,
 C. P. Miller, Jr.,
Assistant Administrator
Inheritance and Estate Taxes

